DOCKET FILE COPY ORIGINAL

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1301 K STREET, N.W.
SUITE 1000 WEST
WASHINGTON, D.C. 20005-3317

(202) 326-7900
FACSIMILE:
(202) 326-7999

1 COMMERCE SQUARE
2005 MARKET STREET
SUITE 2340
PHILADELPHIA, PA 19103
(215) 864-7270
FACSIMILE: (215) 864-7280

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
AUSTIN C. SCHLICK
STEVEN F. BENZ
NEIL M. GORSUCH
GEOFFREY M. KLINEBERG

August 28, 1998

RECEIVED
AUG 28 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121

Dear Ms. Salas:

Pursuant to the Commission's Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act, Public Notice Nos. FCC 96-469, 97-330, and DA 98-1354, enclosed please find for filing an original plus 11 copies of BellSouth's Reply Comments in Support of its Application for In-Region, InterLATA Services in Louisiana.

Please date stamp the extra copy of this letter and return it to the individual delivering this package. Thank you for your assistance in this matter.

Sincerely,

Austin C. Schlick

Enclosures

No. of Copies rec'd 0+16
List ABCDE

Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	CC Docket No. 98-121

To: The Commission

REPLY BRIEF IN SUPPORT OF SECOND APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN LOUISIANA

CHARLES R. MORGAN
WILLIAM B. BARFIELD
JIM O. LLEWELLYN
1155 Peachtree Street, N.E.
Atlanta, GA 30367
(404) 249-2051
DAVID G. FROLIO
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4182
ERWIN G. KRASNOW
VERNER, LIIPFERT, BERNHARD, McPHERSON & HAND
901 15th Street, N.W.
Washington, D.C. 20005
(202) 371-6062
Counsel for BellSouth Corporation

JAMES G. HARRALSON
28 Perimeter Center East
Atlanta, GA 30346
(770) 352-3116
Counsel for BellSouth Long Distance, Inc.

MICHAEL K. KELLOGG
AUSTIN C. SCHLICK
WILLIAM B. PETERSEN
KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.
1301 K Street, N.W.
Suite 1000 West
Washington, D.C. 20005
(202) 326-7900
Counsel for BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.

MARGARET H. GREENE
R. DOUGLAS LACKEY
STEPHEN M. KLIMACEK
675 W. Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375
(404) 335-0764
Counsel for BellSouth Telecommunications, Inc.

August 28, 1998

EXECUTIVE SUMMARY

Two and a half years after passage of the 1996 Act, opponents of Bell company interLATA entry continue to urge fundamental departures from Congress's plan for full competition in telecommunications markets.

Ignoring the holdings of this Commission and the D.C. Circuit, as well as unambiguous legislative history, they still maintain that Track A should be a measure of whether the Bell company has lost "enough" market share to competitors, not a test for the existence of one or more facilities-based competitors.

Ignoring the holdings of the Eighth Circuit (currently on review before the Supreme Court, but still binding this Commission) they maintain that the Commission may reject Bellsouth's Application because BellSouth does not provide combinations of network elements at cost-based rates; or because this Commission disagrees with the Louisiana PSC's prices for local facilities and services; or because BellSouth is not simultaneously providing every OSS interface for which any CLEC has expressed a desire.

Ignoring this Commission's Michigan Order, they maintain that BellSouth cannot prove checklist items are available unless CLECs use them, and that day-in-day-out perfection, rather than nondiscriminatory performance, is required of BellSouth.

Ignoring a Commission rulemaking as well as the plain language of the Act, they argue that BellSouth's separated interLATA affiliate must abide by reporting and operational requirements the opponents themselves have made up, and which would serve no purpose other than limiting BellSouth's ability to compete.

Ignoring concrete market evidence and the findings of nearly every federal agency, state agency, and economist to look at the question, they deny that BellSouth's entry into interLATA

services will lower prices and increase consumer choice, instead clinging to the wholly discredited contention that more competition will hurt consumers.

That opponents still are making (indeed, have featured) these arguments is an unmistakable sign that the Commission should change its course. In prior section 271 proceedings, the Commission has decided as little as possible (Oklahoma, South Carolina, and Louisiana), or has invited parties to make virtually any argument against the application (Michigan). Both approaches seemed to rely on an assumption that issues would drop by the wayside in future proceedings. But it is now clear that the issues will not be narrowed unless the Commission itself steps in to narrow them. The incumbent long distance carriers have too much at stake — billions of dollars in long distance profits every year — to give up any opportunity for delay. Other CLECs likewise have shown they cannot be trusted to acknowledge Bell company compliance with the 1996 Act, because doing so would allow the Bell companies better to compete for profitable customers through one-stop shopping. For its part, the Department of Justice's evaluation of Bellsouth's Application simply melds uncritical recitation of interexchange carrier arguments with flat disregard for the judicial decisions that bind this Commission.

Only this Commission can move the section 271 process ahead. And now is the time to do so. Opponents' near-hysterical denials notwithstanding, BellSouth has addressed in good faith each and every concern voiced by this Commission in its South Carolina and Louisiana Orders. BellSouth is abiding by the orders of this Commission, the Louisiana PSC, and the courts. We believe BellSouth has satisfied all requirements for interLATA entry under section 271. At the very least, however, BellSouth deserves to know exactly what else the Commission thinks BellSouth has to do.

First, this Commission should adopt a definitive construction of Track A that promotes competition, rather than blocking it. Local competitors in Louisiana have shown their ability to win residential and business customers from BellSouth using their own wireline and wireless facilities as well as through resale. Wireline CLECs collectively are serving residential and business customers predominantly over their own facilities, and purely facilities-based PCS service is being used as a substitute for BellSouth's business and residential local service. The underlying purpose of Track A — verifying that facilities-based carriers have an opportunity to compete — thus is fully satisfied. The letter of the law is satisfied as well. There simply is no basis for reading into Track A additional requirements regarding CLECs' geographic scope, customer distribution, market share, or service characteristics that Congress rejected, particularly where such requirements would serve only to keep the interLATA market closed long after local markets are open.

Second, this Commission should bring order to its consideration of the competitive checklist. Because this Commission has failed to place boundaries around its checklist analysis in prior proceedings, and because their only objective is delaying interLATA relief, opponents have presented arguments that lack any good-faith basis in fact or law. The opponents repeat arguments this Commission has directly rejected in prior proceedings, without even acknowledging the arguments are not new. They allege supposedly critical deficiencies in BellSouth's policies and systems that, according to the same companies' operations personnel, do not exist or have no real-world significance. They present "facts" that are badly outdated or simply false, as even cursory investigation would have revealed. And the opponents consistently seek to evade rules of jurisdiction and finality by re-opening tangentially related issues that have

been decided against them by this Commission, the Louisiana Public Service Commission, or the courts.

The Commission should move forward not just Bellsouth's Application, but the entire process of interLATA competition, by rejecting each of these tactics. It should find that BellSouth has met every checklist requirement. But at a bare minimum, the Commission should narrow the issues for future proceedings by making specific findings of compliance on every point where it believes BellSouth has shown satisfaction of the statutory requirements. Continuing the Commission's past practice of issuing a general "No," without also saying "Yes" on specific issues when appropriate, would only mire this Commission in more of the same obstructionism during future section 271 proceedings.

Third, this Commission should make clear that it will not entertain attempts by the major incumbent long distance carriers to add new requirements to the safeguards of section 272. The incumbents have only two goals in making their proposals: delaying section 271 relief and handicapping Bell companies when they are allowed to compete. Neither objective deserves any support from this Commission. Particularly where BellSouth has complied with the structural and transactional requirements of section 272 and the Commission's rules even in advance of receiving section 271 relief, there is no conceivable basis for the Commission to find that the requested interLATA authorization will not be carried out in accordance with those same requirements. See 47 U.S.C. § 271(d)(3)(B).

Finally, this Commission should make clear that it will conduct its public interest inquiry as Congress intended: by focusing on the effects of Bell company entry into interLATA services, rather than circling back to local competition issues Congress put off limits under the checklist. The critical fact, proved by SNET's provision of interLATA services in Connecticut

and other real-world evidence, is that BellSouth's entry into the interLATA services market will increase competition and thereby serve the public interest. Arguments to the contrary rest on the incorrect premise that satisfying a literally endless list of CLEC demands (many of which have already been rejected by Congress or state commissions) is more important than saving consumers billions of dollars per year on their long distance bills. That is wrong as a matter of law, for the CLECs' demands are beyond the bounds of the 1996 Act. And it is wrong as a matter of policy, because further postponing Bell company interLATA entry will not cause CLECs to change their plans to serve only profitable business customers.

This Commission should side with consumers and the Louisiana PSC and let competition go forward. It should comprehensively address, and approve, Bellsouth's Application.

TABLE OF CONTENTS

BELLSOUTH
SECOND LOUISIANA APPLICATION § 271 REPLY

APPENDIX
TABLE OF CONTENTS

19 Reply Affidavit of Richard L. Schmalensee (originally filed in Docket No. 97-208) (Nov. 14, 1997)

20 Reply Affidavit of Professor Jerry A. Hausman (originally filed in Docket No. 97-231) (Dec. 18, 1997)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	CC Docket No. 98-121

To: The Commission

REPLY BRIEF IN SUPPORT OF SECOND APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN LOUISIANA

Not surprisingly, the opponents of Bellsouth's Application for interLATA relief in Louisiana have no real interest in assisting the Commission's application of the statutory criteria of 47 U.S.C. § 271(d)(3). Rather, the major long distance carriers and other CLECs are trying to put more money in their pockets by preventing level competition from BellSouth and other Bell companies. As one CLEC's CEO exhorted his peers last year: "We must delay as long as we possibly can the RBOCs' getting into long distance."[1]

Given the CLECs' agenda, this Commission cannot take their arguments, or their alleged "facts," at face value. As discussed throughout this Reply, the CLECs' claims of pervasive failings by BellSouth are based — at best — on isolated instances of imperfection that BellSouth quickly and cooperatively resolved. At least as often, the CLECs' allegations are unequivocally

[1] Competitive LECs Urged to Wage Drive Against Bell Long Distance, Communications Daily, May 6, 1997, at 3 (quoting J. Shelby Bryan, President and CEO, ICG).

false or grossly misleading. In either case, the CLECs' advocacy betrays a conviction that this Commission will accept opponents' claims without inquiry, or else hold CLECs to a lower standard than BellSouth. This Commission should make clear that it holds all participants in section 271 proceedings to the same high standards of completeness, accuracy, and candor it has applied to Bell companies; the only effective way to do this is to reject arguments based on a lesser showing.

Nor can the Commission rely on the Department of Justice to screen competing carriers' claims. Without differentiating statutory requirements from its own seat-of-the-pants standard, DOJ has simply repackaged the assertions of carriers such as AT&T and MCI, tossed in a few positions contrary to the Eighth Circuit's controlling law, and called the result an "Evaluation." This Commission need not defer to DOJ's recitations of complaints made by private parties, nor could it defer to DOJ on issues such as pricing and UNE combinations, where the Department essentially thumbs its nose at the courts. This Commission, unlike the Department, has a specific statutory standard for relief that it must apply.

At bottom, neither the CLECs nor DOJ provide this Commission with any basis for disputing BellSouth's satisfaction of section 271's preconditions for long distance entry. The Louisiana PSC has specifically found, after more than four years of "intimat[e] involveme[ment] in the issue of local competition," that BellSouth "has met the requirements of section 271 and . . . approval [of Bellsouth's Application] will benefit the consumers of the State of Louisiana." Louisiana PSC at 2. Unlike individual CLECs, and unlike formal and informal trade associations including ALTS, CPI, and CompTel, the Louisiana PSC is a disinterested party. Unlike DOJ, the PSC has experience with (not to mention jurisdiction over) matters involving local competition.

The Louisiana PSC's judgment thus warrants special attention — and not just because section 271(d)(2)(B) says so.

Nor can there be any genuine dispute about the PSC's conclusion that granting BellSouth in-region, interLATA relief will serve the public interest. Although several parties argue that the public interest would not be served if BellSouth entered the long distance market before the local market is open to CLECs, actual competitive entry and BellSouth's satisfaction of the fourteen checklist requirements confirm that this condition has been satisfied. Theories that BellSouth might raise long distance prices through discrimination or cross-subsidy are equally misplaced, as this Commission has found and unequivocal market evidence confirms. Therefore, for the sake of competition and consumers, Bellsouth's Application should be granted.

I. BELLSOUTH SATISFIES THE REQUIREMENTS OF SECTION 271(c)(1)(A) IN LOUISIANA

At least six wireline carriers provide facilities-based local telephone service in Louisiana. Wright Aff. ¶ 66. In addition, BellSouth demonstrated that, in Louisiana, PCS is a viable alternative to wireline local service, and a significant number of consumers are in fact using their PCS service as a substitute for BellSouth's wireline offerings. BellSouth Br. at 9-15. Opponents of interLATA relief have responded to this evidence with irrelevant characterizations of the degree and type of competition in Louisiana, or by attempting to raise legal roadblocks to competition that are at odds with the Act. None of the opponents' assertions undermines BellSouth's central conclusion that facilities-based competition exists in Louisiana to at least the extent required under Track A.

Track A may be satisfied by a combination of CLECs. AT&T contends that "the plain terms" of section 271(c)(1)(A) require BellSouth to demonstrate that a single carrier is providing

predominantly facilities-based service to both residential and business customers. AT&T at 73-74. Although PCS providers in Louisiana meet this proposed standard, AT&T's contention is not the law. "[T]he plain terms" of section 271(c)(1)(A) require BellSouth to establish that it has entered into "one or more binding agreements" with "one or more unaffiliated competing providers." 47 U.S.C. § 271(c)(1)(A) (emphasis added). Section 271(c)(1)(A) therefore does not require a BOC to demonstrate that a single carrier is serving both business and residential customers, as AT&T asserts, but is satisfied "if multiple carriers collectively serve residential and business customers."[2] As the Commission previously explained in rejecting AT&T's "single carrier" argument, the plain-language approach to Track A amply "fulfills Congress' objective in section 271(c)(1)(A) by ensuring the presence of a competing provider for both residential and business and subscribers." Michigan Order, 12 FCC Rcd 20543, 20602, ¶ 111 (emphasis added).

Track A does not require both classes of subscribers be served on a facilities basis. Opponents not only doggedly continue to insist that Track A can only be satisfied by a single carrier, but also maintain that this single carrier must provide predominantly facilities-based service separately to both residential and business customers. See, e.g., AT&T at 74; Sprint at 6; WorldCom at 5. This insistence also finds no support in the Act. After describing the telephone exchange service that must be provided by Track A carriers (i.e., "telephone exchange service (as defined in section 153(47)(A) of this title, but excluding exchange access) to residential and

[2] Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543, 20587-88, ¶ 82 (1997) ("Michigan Order") ("[W]hen a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers . . . this aspect of section 271(c)(1)(A) is met if multiple carriers collectively serve residential and business customers.").

business subscribers"), Congress simply provided that "such telephone exchange service" must be provided exclusively or predominantly on a facilities basis. 47 U.S.C. § 271(c)(1)(A). The facilities-based service requirement thus refers back to a Track A carrier's qualifying telephone exchange services as a whole, not separately to its residential and business services. Accord DOJ at 7-8 n.13.

It seems that a majority of this Commission agrees with DOJ's view that there is no legal or even policy reason "to delay BOC entry into interLATA markets simply because competitors that have a demonstrated ability to operate as facilities-based competitors, and that are in fact providing service predominantly over their own facilities, find it most advantageous to serve one class of customers on a resale basis." Addendum to DOJ Oklahoma Evaluation at 4, CC Docket No. 97-121 (May 21, 1997) ("DOJ Oklahoma Addendum") (Application App. D, Tab 10).[3] The Commission has interpreted Track A as part of the congressional test for whether local markets are open. Michigan Order, 12 FCC Rcd at 20589, ¶ 85. CLECs use the same rights-of-way, facilities, and services to provide residential and business service; thus, as the DOJ suggested in its Oklahoma filing, the fact that a CLEC serves one customer group on a facilities basis is conclusive proof that serving the other group on a facilities basis is practical as soon as the CLEC chooses to do so.

Indeed, the fact that CLECs are using different methods to serve different customer groups affirmatively confirms the openness of local markets. This Commission has stated that Congress "d[id] not express a preference for one particular strategy" when drafting the 1996 Act,

[3] See Letter from William E. Kennard, Chairman, FCC, to Sen. Sam Brownback, dated April 22, 1998; Letter from Michael K. Powell, Commissioner, FCC, to Sen. Samuel D. Brownback, dated April 22, 1998; Letter from Gloria Tristani, Commissioner, FCC, to Sen. Sam Brownback, dated April 22, 1998.

but rather wanted to "maximiz[e] the options available to new entrants." Michigan Order, 12 FCC Rcd at 20602, ¶ 111 (internal quotation marks omitted). If that is so, then a Bell company certainly should not be punished because CLECs have chosen to exercise the resale option the Bell company has successfully made available. This would "tip unnecessarily the statute's balance between facilitating local entry and providing for additional competition in interLATA services by adding an unnecessary prerequisite to Track A that might foreclose entry in certain cases for no beneficial competitive purpose." DOJ Oklahoma Addendum at 3-4.

The perverse consequences that would follow from rejecting this reading of Track A are highlighted by Sprint's comments in this proceeding. Relying on statements by BellSouth employees explaining why it is in BellSouth's best interest for resale customers to be satisfied, Sprint makes the preposterous claim that BellSouth "has publicly articulated" a plan for channeling CLECs to resale. Sprint at 11-12. Not only does Sprint provide no genuine support for its contention that BellSouth is "hostile" to facilities-based service, but Sprint's very premise that resale competition reflects negatively on the openness of the market to facilities-based carriers is absurd. CLECs, not incumbent LECs, decide how new entrants will come into the local market. Furthermore, this Commission has noted that resale and facilities-based entry are not substitutes for each other, but rather complementary entry strategies. Local Interconnection Order, 11 FCC Rcd at 15509, ¶ 12 (noting "the likelihood that new entrants will combine or alter entry strategies over time").

Rather than causing Bell companies to increase facilities-based competitive entry — which is beyond their control — requiring that the same CLECs serve both residential and business customers predominantly on a facilities basis would prod Bell companies to discourage resale activity that could delay their entry into long distance. Such an application of Track A

also would make interLATA competition even more dependent upon the very companies that have an incentive to block that competition. See generally Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, 12 FCC Rcd 8685, 8718, ¶ 56 (1997) ("Oklahoma Order") (noting potential competitors' "incentive to 'game' the section 271 process"). As the Louisiana PSC has pointed out, "BellSouth only has control over its own actions. To predicate BellSouth's entry into the interLATA market upon an unrelated company's decision to enter the local market circumvents the plain and clear intent of the Act." Louisiana PSC at 7; accord Michigan Order, 12 FCC Rcd at 20602 n.252 ("Section 271 gives the BOCs the power to determine when they will enter the long distance market . . .).

The Commission should base its Track A review on agreements specified by a BOC. In its initial brief, BellSouth pointed out that, on the wireline side, AT&T, Hyperion, Shell, and Louisiana Unwired collectively serve both residential and business lines, most of them facilities-based. Br. at 6-7. Not surprisingly, CLECs object that it is "absurd[]" (AT&T at 76 n.30) and "contrary to . . . common sense" (MCI at 4) for BellSouth to be able to choose the carriers on which it will base its Track A showing, when there are numerous other carriers in the market.

These opponents simply object to the statutory scheme. The 1996 Act requires a Bell company applying under Track A to point to "one or more binding agreements" with "one or more unaffiliated competing providers." 47 U.S.C. § 271(c)(1)(A). The inquiry is whether any qualifying provider(s) exist, not whether competition in the state as a whole satisfies some criteria. "Put simply then, Track A visualizes a demonstration of a competitor in the local exchange market." SBC Communications Inc. v. FCC, 138 F.3d 410, 413 [slip op. at 7] (D.C. Cir. 1998) (emphasis added). In its Michigan Order, therefore, the FCC made clear that a Bell

company decides which carriers it wishes to rely upon to satisfy Track A, and then the commission evaluates Track A compliance based upon that designation. 12 FCC Rcd at 20585, ¶ 78. Section 271(c)(1)(A) does not take into account the activities of other CLECs with which the Bell company may also have implemented agreements. In fact, in its Michigan Order, the Commission expressly concluded that the three carriers designated by Ameritech (Brooks Fiber, MFS WorldCom, and TCG) were "collectively . . . 'unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers.'" Id. at ¶ 20589, 85. In allowing BellSouth to designate the carriers upon which its Track A application is based, this Commission will merely acknowledge the "flexibility" that Congress gave BOCs to satisfy Track A. Id. at 20588, ¶ 84.

Track A compliance does not depend on the quantity of facilities-based service. It is beyond dispute that section 271(c)(1)(A) does not require a CLEC to "serve a specific market share in its service area to be considered a 'competing provider.'" Id. at 20585, ¶ 77. As the Commission has pointed out, the Senate and House each rejected language that would have imposed such a requirement. Id. Chairman Kennard recently emphasized this point, writing "it is my view that the goal of the 1996 Act is not to ensure that competitors have taken a certain amount of business from the Bell Operating Company, but rather to bring the benefits of competition to consumers."[4]

Some CLECs nevertheless continue to advocate a metric test, by contending that the thousands of facilities-based lines provided by BellSouth's competitors are de minimis. See, e.g., ALTS at 20-21; CompTel at 22-24; MCI at 1-6; Sprint at 5-12. Seizing on language in the

[4] Letter from William E. Kennard, Chairman, FCC, to Sen. John B. Breaux, dated July 7, 1998 at 2 ("July 7th Kennard Letter").

Commission's Michigan Order, in which the Commission stated that "there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC, and therefore, not a 'competing provider,'" Michigan Order, 12 FCC at 20585, ¶ 78, these CLECs contend that the amount of facilities-based local competition in Louisiana is too small. Of course, implicit in this argument is the concession that there is facilities-based competition in the Louisiana local market, as required by Track A. See, DOJ at 6 (conceding that "facilities-based competition is beginning to emerge in Louisiana."). Not only did Congress expressly reject a metric test — even one operating under the alias of a "de minimis" competition requirement — but the hundreds or thousands of facilities-based lines individually offered by wireline carriers such as Hyperion, Shell, ACSI (e.spire), and American MetroComm cannot be considered de minimis, if the phrase is to have any meaning.[5]

[5] This is a far different case than SBC's application for Oklahoma, where the applicant could show no more than facilities-based "[t]est service provided to only four employees." SBC Communications Inc. v. FCC, 138 F.3d at 416. In Louisiana, the smallest facilities based carrier has dozens of facilities-based lines at a bare minimum and there were at least 4,281 facilities-based CLEC local lines in service as of June 1998. Wright Conf. Aff. Ex. C-CLEC.

KMC cagily claims that it does not have residential "customers," without saying whether it serves residential lines. KMC at 4. For their part, AT&T's lawyers implausibly state the company "is not aware" whether it has a facilities-based line in service, AT&T at 74-75, and AT&T's affiant avoids the issue of facilities-based residential service altogether, AT&T's Augier Aff. ¶ 5. BellSouth cannot determine how KMC and AT&T are using the residential lines they have ordered, whether they are billing residential end users, or how they define "customers." Directory listings and ported numbers, however, indicate that these carriers have activated residential lines in Louisiana. See generally Wright Conf. Aff. Furthermore, KMC does not dispute BellSouth's evidence that its 30 business customers account for hundreds of facilities-based lines. See KMC's Register Aff. ¶ 4; Wright Conf. Ex. C-CLEC. AT&T likewise agrees with BellSouth that it is providing "medium and large business customers" local exchange service on a facilities basis. AT&T's Augier Aff. ¶ 5.

Track A is satisfied by the existence of PCS carriers in Louisiana. Of course, BellSouth is not limited to showing Track A compliance through the activities of wireline CLECs. Chairman Kennard has recently reiterated that PCS service could satisfy Track A provided that the BOC can "demonstrate that PCS is used to replace, rather than merely supplement, the traditional wireline service offered by the Bell Operating Company." July 7th Kennard Letter at 1. In its Application, BellSouth showed that in Louisiana, PCS is "an actual commercial alternative" to wireline service for a substantial number of customers today. BellSouth Br. at 9-15. BellSouth provided the Commission with precisely the kinds of evidence that Chairman Kennard indicated would be persuasive: "documentation such as studies or other objective analysis, identifying the customers that have actually or would consider replacing their wireline service with PCS service, and a showing that the marketing efforts of the PCS provider aim to induce such replacements." July 7th Kennard Letter at 1.

BellSouth's showing that PCS providers in Louisiana satisfy Track A included PCS marketing materials as well as consumer studies performed by M/A/R/C Research and Southern Media & Opinion Research, and a pricing study performed by Dr. Aniruddha Banerjee. The M/A/R/C study, for example, demonstrated that 26 percent of PCS subscribers currently rely on PCS as their primary telephone service; two-thirds of PCS customers having more personal than business usage use PCS instead of wireline service to place or receive calls at home. M/A/R/C Study Tables 4 & 8 (attached to Denk Aff., Application App. A, Tab 6). Approximately 6 percent of PCS customers in Louisiana (10 percent of business users and 4 percent of personal users) subscribed to their PCS service instead of ordering wireline service. Id. at Table 4. The M/A/R/C research also identified particular representative individuals in Louisiana who are using PCS service as a substitute for BellSouth's wireline service. Id. See also Application App. D,

Tab 14 (also surveying Louisiana PCS users). Dr. Banerjee's study demonstrated that a significant percentage of BellSouth's local residential customers in New Orleans could consider switching to PCS PrimeCo on the basis of price alone. Attachment to Banerjee Aff. at 24 (Application App. A, Tab 1).

While CLECs predictably assert that PCS is not a viable alternative to wireline local service, they fail to offer any hard evidence to support their position or rebut BellSouth's. Instead, they merely criticize BellSouth's evidence, relying upon irrelevancies and explicit disavowals of their own public statements.

Some CLECs trot out the old metric test, claiming that the number of customers who actually have substituted PCS service for wireline service is too small to satisfy Track A. See e.g., ALTS at 6-11; AT&T at 77; CPI at 22; MCI at 8; Sprint at 24. Sprint claims, for example, that because "the unquestionably highest" and most prevalent use of PCS is to complement, rather than replace, wireline service, PCS service cannot satisfy Track A. Sprint at 25. This is just another way of saying that not enough PCS users have taken their service as a substitute for wireline telephone exchange service but, as discussed above, this Commission has expressly rejected any metric test for Track A competition, in keeping with Congress's own clear rejection of such a requirement. A metric argument has even less validity for PCS service than for wireline service, since PCS, which is aggressively marketed throughout Louisiana's largest markets, is indisputably "an actual commercial alternative" to the wireline service offered by BellSouth. Michigan Order, 12 FCC Rcd at 20585, ¶ 78 (finding existence of "an actual commercial alternative" based upon acceptance of service requests and service to a non-de minimis number of end users for a fee).

CLECs also claim that the introduction of PCS has not had any effect on BellSouth's local wireline rates. See, e.g., Sprint at 18; AT&T's Hubbard & Lehr ¶¶ 64-65. Whether or not this is true, it is not the test for Track A compliance. It is the fact, not the economic impact, of a Track A competitor's presence that counts.

ALTS notes that the M/A/R/C study did not include interviews with individuals who "had either not thought about PCS service, or had considered it and decided not to subscribe to it." ALTS at 7. AT&T contends that "because the sample was drawn from PCS users, it is likely to be biased and not representative of the average residential subscriber." AT&T's Hubbard & Lehr Aff. ¶ 66. The objective of the M/A/R/C study was to examine the PCS market for the existence of customers who exhibit patterns of purchase and usage that indicate they are substituting PCS for local wireline service. M/A/R/C Study at 1; Denk Reply Aff. ¶ 2. Individuals who do not subscribe to PCS service by definition are not part of the PCS market that was examined by the M/A/R/C. Denk Reply Aff. ¶ 2.

Opponents contend that the sample in the M/A/R/C study was too small (CPI at 19-21), and/or that the sample was compromised because respondents answered a newspaper advertisement. See, e.g. CPI at 17-19; Sprint at 21-22;WorldCom at 10. As explained in the reply affidavit of M/A/R/C's Mr. Denk, however, the size and nature of the sample used by M/A/R/C was consistent with standard survey methodologies, and the alternatives proposed by the critics would themselves have distorted the survey.

In fact, the consistency between the results of a prior M/A/R/C study (used by BellSouth in its first Louisiana Application) and the results of the M/A/R/C group's second study "provides strong empirical evidence of the reliability of these sampling estimates." Denk Rply Aff. ¶ 13.

Likewise, criticisms of Dr. Banerjee's study do not alter his basic conclusions. See generally, Banerjee Reply Aff. AT&T and Sprint contend that the switching probabilities set out by Dr. Banerjee are overstated: PCS customers pay for both incoming and outgoing calls, and therefore the combined minutes used by Dr. Banerjee for the four PCS plans should be divided in half before any comparison with the usage distribution in the BellSouth wireline customer sample is made. AT&T's Hubbard & Lehr Aff. ¶¶ 69-71; Sprint's Shapiro & Hayes Aff. at 16-21. Dr. Banerjee agrees that this adjustment should be made. Banerjee Reply Aff. ¶ 30. Yet while this adjustment somewhat lowers the switching probabilities calculated by Dr. Banerjee, the adjustment does not alter Dr. Banerjee's basic conclusion. Even with the adjustment suggested by AT&T, there is a substantial group of Louisiana residential customers (up to nine percent) for whom PCS is a feasible substitute for wireline service on the basis of price alone. Id. Other attacks on Dr. Banerjee's analysis either were addressed in the original study, or are unfounded. Banerjee Rply Aff. ¶¶ 21-36.

In addition to expert research findings, BellSouth provided evidence of PCS marketing efforts to convince consumers to substitute PCS service for wireline service. In particular, AT&T has been telling investors and consumers that its new PCS pricing structure, the Digital One Rate Plan, makes PCS a substitute for wireline service. Application D, Tab 17. Yet in its comments to this Commission, AT&T paints a picture completely at odds with its prior representations. AT&T now argues that PCS is not a substitute for wireline service, and "it seems more likely that one of the new fixed-wireless technologies under development will provide the vehicle for this [wireline] competition rather than wireless networks based on existing PCS architectures." AT&T's Hubbard & Lehr Aff. ¶ 65. AT&T's only attempt to reconcile its conflicting representations is the following statement: "PCS providers are

positioning the service as an alternative or extension to mobile wireless services, not fixed wireless or wireline." AT&T's Hubbard & Lehr Aff. ¶ 63. AT&T thus would have this Commission believe that when it told millions of consumers that the Digital One Rate Plan "could make your wireless phone your only phone," Application App. D, Tab 17, it was referring exclusively to mobile service. AT&T also implicitly disavows the representations of its own Chairman, Michael Armstrong, who, when announcing the Digital One Rate plan, indicated that one of the plan's target groups is consumers who see PCS service as a replacement for wireline service. Application App. D, Tab 16.

AT&T's cynical repudiation of its representations to consumers and investors does not change the plain fact that AT&T believes consumers are willing to substitute PCS service for wireline service. AT&T otherwise would not be spending hundreds of thousands (or quite possibly millions) of dollars to advertise its PCS offerings as "your only phone." These public representations confirm what BellSouth has proved in its Application: In Louisiana, PCS is a viable alternative to local wireline service. Through this service, as well as CLECs' wireline offerings, BellSouth satisfies Track A.

II. BELLSOUTH SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN LOUISIANA

Any CLEC in Louisiana, including each of the Track A carriers identified in Bellsouth's Application, has a legally enforceable right to obtain all checklist items in accordance with the terms of section 271(c)(2)(B) and the governing implementing decisions of this Commission, the Louisiana PSC, and the courts. As described in Bellsouth's Application, CLECs may: (1) opt into an existing, Louisiana PSC-approved agreement (such as the AT&T agreement) that affords access to all checklist items either directly or through a "most-favored nation" ("MFN")